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Supreme Court, U.S.
FILED
JUL 7 2003
CLERK

No. 02-1574, No. 02-1624

IN THE
SUPREME COURT OF THE UNITED STATES

THE UNITED STATES OF AMERICA,
Petitioner

v.

MICHAEL A. NEWDOW, ET AL.,
Respondents

ELK GROVE UNIFIED SCHOOL DISTRICT
and DAVID W. GORDON, Superintendent, EGUSD,
Petitioners

v.

MICHAEL A. NEWDOW, ET AL.,
Respondents

On Petition for Writ of Certiorari
to the United States Court of Appeals for the Ninth Circuit

RESPONDENT NEWDOW'S OPPOSITION TO SANDRA L. BANNING'S MOTION FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF

MICHAEL NEWDOW
PO BOX 233345
SACRAMENTO, CA 95823

Phone: (916) 427-6669
Fax: (781) 394-7711
E-mail: FirstAmendmist@cs.com

Respondent (Newdow) understands and wholeheartedly supports this Court's customary grant of permission for any interested party to file an *amicus curiae* brief. Accordingly, he has willingly provided written consent to all of the many individuals and organizations who have requested that of him.

All, that is, except one. Newdow has not consented to the filing of such a brief by Foley & Lardner for its client, Sandra Banning. After seeing the manifest falsehoods found in the materials that law firm submitted to the Ninth Circuit – and now finding further blatant distortions and untruths pervading the brief being proffered to this Court – Newdow feels compelled to file this formal Opposition.

Undoubtedly, this Court has no interest in the petty "he said, she said" matters that have needlessly become part and parcel of the family courts in this Nation.[1] Because Newdow also finds those to be quite distasteful, he will not belabor the point of this filing with refutations of each of the myriad mischaracterizations found in the *amicus* brief. Rather, he will point only to the following items as typical examples of the mendacity pervading the Foley & Lardner brief.

It is alleged that, "Ms. Banning has always been her daughter's primary caregiver, and her daughter has always lived with her." Of course, no mention is made of the fact that Ms. Banning has spent the last four years in a continuous effort to block Newdow's attempts to share equally

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[1] Newdow is currently in the process of challenging the basic framework of the Family Law system in California, which he believes does little but cause egregious harms to children and parents alike. Perhaps this Court will eventually receive a petition for certiorari in that litigation.

in raising their child.[2] Exhibit A shows her latest request for attorneys' fees (from just two weeks ago): $145,000. That hardly sounds like the amount of money generally needed to fight a parent as uninterested and undevoted as Newdow is depicted.[3] Their daughter does not live only with Banning; she also lives with Newdow, who has given up virtually all employment for the past three years solely to work on overturning a constitutionally bankrupt system that routinely deprives persons of their parental rights with no regard whatsoever for basic due process.

It is also stated that, "[w]hen her daughter[4] was two months old, Ms. Banning moved at Newdow's request from Sacramento, California, to a house Newdow owned in Winston-Salem, North Carolina." In fact, their child was born on June 8, 1994, and the move occurred on July 4, less than one month later. More to the point is the phraseology, "a house Newdow owned in Winston-Salem, North Carolina." After Ms. Banning notified Newdow of her "unintentional" pregnancy, she unhesitatingly accepted Newdow's offer to live near him at his "base of operations," thus allowing her to have the home of which she'd always dreamed. That home was

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[2] Judicial notice may be taken of the fact that the California Family Code rewards parents for engaging in these tactics by providing markedly increased "child support" payments when the other parent's fundamental constitutional right to the custody of the child is infringed upon. California Family Code § 4050 *et seq*.

[3] Incredibly, this family law matter will first go to trial later this month. The extraordinary sum requested – which is in addition to previous attorneys' fee awards – does not include what will undoubtedly be some further huge fee request(s) when the trial ends.

Newdow currently has an appeal in progress before the California Court of Appeal for the Third District (consolidated case Nos. C040840, C042384) challenging the notion that a court can force a parent – with absolutely no finding of wrongdoing – to pay for an attorney whose sole goal is to deprive that parent of his fundamental constitutional right to nurture and love his child. That this process – in place for decades – is but one of the many that persist without challenge demonstrates the incredibly perverse nature of the current Family Law system.

[4] Attention might be paid to the terminology, "her daughter," in this setting.

purchased by Newdow specifically for her, their child, and her child by another man. Exhibit B shows the Warranty Deed for the property, signed less than two weeks before the move. It is hardly appropriate to portray that as "a house Newdow owned."

These – and the many other – distortions of the truth reveal a pattern, especially when examined in light of the claims Foley & Lardner (and its client) made in the Ninth Circuit. For instance, there it was alleged that:

> [P]rior to the Ninth Circuit panel decision in this matter released on June 26, 2002, I had been only vaguely aware that Mr. Newdow had challenged the legality of the Pledge of Allegiance.

Declaration of Sandra L. Banning, July 31, 2002. Yet less than four months earlier, Ms. Banning attempted to prevent Newdow from having his child share in the experience as her father argued this historic case before the appellate panel. In doing so, she submitted to the California Family Court a Declaration stating:

> I am opposed to modifying the parenting plan established by the court order of February 6, 2002, so that Respondent can have custody of his daughter on the date that he is presenting his oral argument to the Ninth Circuit Court of Appeals that the words "under God" should be removed from the pledge of allegiance.

Declaration of Sandra L. Banning, March 4, 2002.[5]

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[5] Ms. Banning's awareness of the litigation actually goes back far further. In 1997, when Newdow first became involved in the litigation, the two parents were good friends. Accordingly, they discussed the case frequently; so much so that Ms. Banning, in her first filing to marginalize Newdow from sharing custody of their child, wrote:

> A short time ago the Defendant ... became interested in a Constitutional law question having to do with the recitation of the pledge of allegiance and the mention of God in the same. He began a legal action in the State of Florida, complaining that school children should not be made to recite the pledge of allegiance. His case was summarily dismissed and he has now filed an appeal. … In order to have standing to bring this suit he wants to have [our child] enroll in a Florida public school.

The claims made in the brief to this Court – that:

(a) "[Ms. Banning] is particularly concerned by the undemocratic nature of the court of appeals' decision;"[6]
(b) "Ms. Banning intends to file an *amicus brief* discussing reasons why the Pledge is constitutional under settled Establishment Clause principles;"[7] and
(c) "Ms. Banning will address at the merits stage the underlying substantive issue under settled Establishment Clause principles,"[8]

also reveal the unabashed proclivity of this firm and its client to submit to the courts whatever suits their purposes without regard to integrity or candor. Just months ago, Ms. Banning wrote in another sworn declaration that:

> I have no legal training nor legal knowledge. I do not understand legal terminology ... I have never had an interest in the legal system.

Declaration of Sandra Banning, September 13, 2002, at 6:13-14. Similarly, her claims regarding their daughter's religious views seem to depend more on the given maternal legal objective than on any characteristic of the child:

(a) "[Our daughter] "is just not ready for the intellectual effort necessary to deal with the question of the existence of God;"[9]
(b) "My daughter is a Christian who regularly attends church, and she believes in God;"[10] and
(c) "Ms. Banning understands that her daughter, when she reaches an appropriate age, will have to decide for herself what religious and moral values to embrace."[11]

Declaration of Sandra L. Banning, July 2, 1999. Foley & Lardner's attorneys were specifically informed of these (and other) facts after they submitted their Motion to Intervene. They were requested to withdraw their client's July 31, 2002 statement or to correct the record. They refused to do either.

[6] Brief for Sandra Banning in Support of Petitions for Certiorari, at 2.
[7] Id., at 8.
[8] Id., at 12.
[9] Declaration of Sandra Banning, March 4, 2002, ¶ 2.
[10] Declaration of Sandra Banning, July 31, 2002, ¶ 4.
[11] Foley and Lardner / Banning *Amicus* brief, June 27, 2003, at 10-11.

CONCLUSION

Newdow believes strongly in the *amicus* process. In fact, he has willingly consented to every *amicus* request made by the myriad other applicants in this action. However, prior claims by Ms. Banning and Foley & Lardner – in addition to those in the current proposed *amicus curiae* brief – suggests that they may well tarnish the litigation process.

For the foregoing reasons, Sandra Banning's Motion to file an *amicus curiae* brief – as made by her counsel, Foley & Lardner – should be denied.

Respectfully submitted.

July 7, 2003

Michael Newdow, Respondent

EXHIBIT A

BANNING'S REQUEST FOR (AN ADDITIONAL) $145,000.00 IN ATTORNEYS' FEES

PETITIONER/PLAINTIFF	SANDRA L. BANNING	CASE NUMBER
RESPONDENT/DEFENDANT	MICHAEL NEWDOW	99FL04312

ATTACHMENT TO APPLICATION FOR ORDER AND SUPPORTING DECLARATION:

OTHER RELIEF REQUESTED:

Petitioner requests the following orders be made:

1. Order shortening time for service and filing of this motion and an order specially setting this matter.

2. Order continuing the settlement conference and trial to late October or November 2003.

3. Order preventing Respondent from calling Dianne Fetzer, Attorney at Law as a witness or deponent in any capacity whatsoever.

4. Order limiting or reducing Respondent's Expert Witness List.

5. Order for case management.

6. Order denying Respondent's request for a jury trial.

7. Order allowing Dr. Wagner to interview or daughter and the parties and/or order a new 730 evaluation be performed.

8. Order for attorney's fees and costs in the sum of $45,000, pendente lite attorney's fees and costs for trial preparation and trial in the amount of $75,000 and Appellate fees and costs in the sum of $25,000.

9. Order to exclude Dr. Kaufman as a 730 expert.

10. Order to keep trial in family law courthouse.

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Legal Solutions Plus

EXHIBIT B

WARRANTY DEED FOR PROPERTY "NEWDOW OWNED"

BK1830 P1666

PRESENTED FOR REGISTRATION AND RECORDING

'94 JUL 13 P3:57

L.E. SPEAS
REGISTER OF DEEDS
FORSYTH CO. N.C.

$12.00 pd.

$170.30

STATE OF NORTH CAROLINA

Real Estate Excise Tax

107

Excise Tax

Recording Time, Book and Page

Tax Lot No. 59L, Block 3471 Parcel Identifier No.

Verified by County on the day of , 19

by

Mail after recording to BOX

This instrument was prepared by RONALD J. SHORT, Esquire

Brief description for the Index

NORTH CAROLINA GENERAL WARRANTY DEED

THIS DEED made this 22nd day of June , 1994 , by and between

GRANTOR	GRANTEE
CLARENCE E. WIGGINS and Wife, TARLOUH WIGGINS	MICHAEL A. NEWDOW (Single)

Enter in appropriate block for each party: name, address, and, if appropriate, character of entity, e.g. corporation or partnership.

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in the City of Winston Township, Forsyth County, North Carolina and more particularly described as follows:

BEST AVAILABLE COPY